

The Honorable Robert H. Whaley

Scott M. Ellerby
Mills Meyers Swartling
1000 Second Avenue, 30th Floor
Seattle, WA 98104-1064
(206) 382-1000
WSBA No. 16277
E-mail: sellerby@mms-seattle.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BENJAMIN R. BARTON,

Plaintiff,

vs.

NCO FINANCIAL SYSTEMS, INC.

Defendant.

NO. CV-08-306-RHW

ANSWER OF NCO FINANCIAL
SYSTEMS, INC. TO
COMPLAINT

Defendant, NCO Financial Systems, Inc. (hereinafter "NCO"), for itself alone, responds to the complaint filed by plaintiff, Benjamin F. Barton ("Plaintiff"), as follows:

I. STATEMENT OF CASE

NCO denies the allegations contained in the Statement of the Case.

ANSWER OF NCO FINANCIAL SYSTEMS,
INC. TO COMPLAINT - 1
(NO. CV-08-306-RHW)

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

II. PARTIES

2.1 NCO lacks sufficient information to answer the allegations contained in ¶ 2.1, and based thereon denies the same.

2.2 NCO admits Capital One placed an account owed by Plaintiff with NCO for collection. Except as expressly admitted, NCO denies the remaining allegations contained in ¶ 2.2 for lack of sufficient information.

2.3 NCO lacks sufficient information to answer the allegations contained in ¶ 2.3, and based thereon denies the same.

2.4 NCO admits the allegations of ¶ 2.4.

2.5 NCO admits that it engages in debt collection nationwide. Except as specifically admitted, NCO denies the remaining allegations contained in ¶ 2.5 of the Complaint.

2.6 NCO admits that it regularly attempts to collect consumer and commercial debt. Except as specifically admitted, NCO denies the remaining allegations contained in ¶ 2.6 of the Complaint.

2.7 NCO admits that when it acts as a debt collector as defined by 15 U.S.C. § 1692a(6) with respect to an account its conduct may be governed by the applicable provisions of the FDCPA. Except as specifically admitted, NCO denies the remaining allegations contained in ¶ 2.7 of the Complaint.

ANSWER OF NCO FINANCIAL SYSTEMS,
INC. TO COMPLAINT - 2
(NO. CV-08-306-RHW)

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

1 2.8 NCO admits Capital One placed account number
2 xxxxxxxxxxxxx8610 with NCO for collection and NCO made collection
3 attempts thereon. Except as expressly admitted, NCO denies the remaining
4 allegations contained in ¶ 2.8.
5

6 III. JURISDICTION AND VENUE

7 3.1 NCO admits to the allegations contained in ¶3.1 for jurisdiction
8 and venue purposes only.
9

10 VI. FACTS

11 4.1 NCO admits that when it acts as a debt collector as defined by
12 15 U.S.C. § 1692a(6) and/or analogous state laws its conduct may be governed
13 by the applicable provisions of those statutes. Except as specifically admitted,
14 NCO denies the remaining allegations contained in ¶ 4.1 of the Complaint.
15

16 4.2 NCO lacks sufficient information to answer the allegations
17 contained in ¶ 4.2, and based thereon denies the same.

18 4.3 NCO lacks sufficient information to answer the allegations
19 contained in ¶ 4.3, and based thereon denies the same.

20 4.4 NCO lacks sufficient information to answer the allegations
21 contained in ¶ 4.4, and based thereon denies the same.
22

23 4.5 NCO denies the allegations contained in ¶ 4.5
24

25 ANSWER OF NCO FINANCIAL SYSTEMS,
26 INC. TO COMPLAINT - 3
(NO. CV-08-306-RHW)

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

1 4.6 NCO admits its records for the subject account indicate a call was
2 made at approximately 11:57 a.m. on June 30, 2008. However, NCO lacks
3 sufficient information to answer the remaining allegations contained in ¶ 4.6,
4 and based thereon denies the same.
5

6 4.7 NCO admits its records for the subject account indicate a call was
7 made at approximately 2:45 p.m. on June 30, 2008. However, NCO lacks
8 sufficient information to answer the remaining allegations contained in ¶ 4.7,
9 and based thereon denies the same.
10

11 4.8 NCO denies the allegations contained in ¶ 4.8.

12 4.9 NCO admits its records for the subject account indicate a call was
13 made at approximately 6:11 p.m. on July 1, 2008. NCO lacks sufficient
14 information to answer the remaining allegations contained in ¶ 4.9, and based
15 thereon denies the same.
16

17 4.10 NCO admits its records for the subject account indicate a call was
18 made at approximately 6:11 p.m. on July 1, 2008. Except as specifically
19 admitted, NCO denies the allegations contained in ¶ 4.10.
20

21 4.11 NCO denies the allegations contained in ¶ 4.11.

22 4.12 NCO admits its records for the subject account indicate a call was
23 made at approximately 5:28 p.m. on July 2, 2008. However, NCO lacks
24

1 sufficient information to answer the remaining allegations contained in ¶ 4.12,
2 and based thereon denies the same.

3 4.13 NCO lacks sufficient information to answer the allegations
4 contained in ¶ 4.13, and based thereon denies the same.
5

6 4.14 NCO lacks sufficient information to answer the allegations
7 contained in ¶ 4.14, and based thereon denies the same.

8 4.15 NCO lacks sufficient information to answer the allegations
9 contained in ¶ 4.15, and based thereon denies the same.
10

11 4.16 NCO admits its records for the subject account indicate it called
12 Plaintiff's home. Except as expressly admitted, NCO denies the remaining
13 allegations in ¶ 4.16.

14 4.17 NCO denies the allegations contained in ¶ 4.17.

15 4.18 NCO denies the allegations contained in ¶ 4.18.

16 4.19 NCO denies the allegations contained in ¶ 4.19.
17

18 V. FIRST CAUSE OF ACTION

19 Washington State Collection Agency Act

20 5.1 NCO incorporates its responses to ¶¶ 1 through 4.19 as though
21 fully set forth herein.
22

1 5.2 In response to ¶ 5.2 of the Complaint NCO avers the cited statute
2 speaks for itself and refers all matters of law to the court.

3 5.3 NCO denies the allegations contained in ¶ 5.3 of the Complaint.

4 5.4 NCO denies the allegations contained in ¶ 5.4 of the Complaint.

5 5.5 NCO denies the allegations contained in ¶ 5.5 of the Complaint.

6 5.6 NCO denies the allegations contained in ¶ 5.6 of the Complaint.

7 5.7 NCO denies the allegations contained in ¶ 5.7 of the Complaint.

8
9 VI. SECOND CAUSE OF ACTION

10 Fair Debt Collection Practices Act Violation

11 (Application of Statute)

12
13 6.1 NCO incorporates its responses to ¶¶ 1 through 5.7 as though fully
14 set forth herein.

15 6.2 In response to ¶ 6.2 of the complaint NCO avers the cited statute
16 speaks for itself and refers all matters of law to the court.

17 6.3 In response to ¶ 6.3 of the complaint NCO avers the cited statute
18 speaks for itself and refers all matters of law to the court.

19 6.4 In response to ¶ 6.4 of the complaint NCO avers the cited statute
20 speaks for itself and refers all matters of law to the court.
21
22

1 6.5 NCO avers the cited statute speaks for itself and refers all matters
2 of law to the court. NCO admits that when it acts as a debt collector as defined
3 by 15 U.S.C. § 1692a(6) its conduct may be governed by the applicable
4 provisions of the FDCPA. NCO lacks sufficient information to answer the
5 remaining allegations contained in ¶ 6.5 of the complaint, and based thereon
6 denies the same.
7

8 VII. THIRD CAUSE OF ACTION

9 Fair Debt Collection Practices Act Violation

10 (Harassment)

11
12 7.1 NCO incorporates its responses to ¶¶ 1 through 6.5 as though fully
13 set forth herein.

14 7.2 In response to ¶ 7.2 of the complaint NCO avers the cited statute
15 speaks for itself and refers all matters of law to the court.
16

17 7.3 In response to ¶ 7.3 of the complaint NCO avers the cited statute
18 speaks for itself and refers all matters of law to the court. Except as specifically
19 admitted, NCO denies the remaining allegations contained in ¶ 7.3 of the
20 Complaint.
21

22 7.4 NCO denies the allegations contained in ¶ 7.4 of the Complaint.

23 7.5 NCO denies the allegations contained in ¶ 7.5 of the Complaint.
24

25 ANSWER OF NCO FINANCIAL SYSTEMS,
26 INC. TO COMPLAINT - 7
 (NO. CV-08-306-RHW)

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

1 7.6 NCO denies the allegations contained in ¶ 7.6 of the Complaint.

2 7.7 NCO denies the allegations contained in ¶ 7.7 of the Complaint.

3 7.8 NCO denies the allegations contained in ¶ 7.8 of the Complaint.

4 7.9 NCO denies the allegations contained in ¶ 7.9 of the Complaint.

6 VIII. FOURTH CAUSE OF ACTION

7 Fair Debt Collection Practices Act Violation

8 (Unfair)

9 8.1 NCO incorporates its responses to ¶¶ 1 through 7.9 as though fully
10 set forth herein.
11

12 8.2 In response to ¶ 8.2 of the complaint NCO avers the cited statute
13 speaks for itself and refers all matters of law to the court.

14 8.3 NCO denies the allegations contained in ¶ 8.3 of the Complaint.

15 8.4 NCO denies the allegations contained in ¶ 8.4 of the Complaint.

16 8.5 NCO denies the allegations contained in ¶ 8.5 of the Complaint.

18 IX. FIFTH CAUSE OF ACTION

19 (Consumer Protection Act)

20 9.1 NCO incorporates its responses to ¶¶ 1 through 8.5 as though fully
21 set forth herein.
22

1 9.2 In response to ¶ 9.2 of the complaint NCO avers the cited statute
2 speaks for itself and refers all matters of law to the court.

3 9.3 NCO lacks sufficient information to answer the allegations
4 contained in ¶ 9.3, and based thereon denies the same.

5 9.4 In response to ¶ 9.4 of the complaint NCO avers the cited statute
6 speaks for itself and refers all matters of law to the court.

7 9.5 In response to ¶ 9.5 of the complaint NCO avers the cited statute
8 speaks for itself and refers all matters of law to the court.

9 9.6 NCO denies the allegations contained in ¶ 9.6 of the Complaint.

10 9.7 NCO denies the allegations contained in ¶ 9.7 of the Complaint.

11 9.8 NCO denies the allegations contained in ¶ 9.8 of the Complaint.

12 9.9 NCO denies the allegations contained in ¶ 9.9 of the Complaint.

13 9.10 NCO denies the allegations contained in ¶ 9.10 of the complaint.

14 AFFIRMATIVE DEFENSES

15 FIRST AFFIRMATIVE DEFENSE

16 As a first affirmative defense, NCO alleges plaintiff's Complaint should
17 be dismissed because the various causes of action fail to state claims upon
18 which relief can be granted.

19
20
21
22
23
24
25 ANSWER OF NCO FINANCIAL SYSTEMS,
26 INC. TO COMPLAINT - 9
 (NO. CV-08-306-RHW)

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

1 SECOND AFFIRMATIVE DEFENSE

2 As a second affirmative defense, NCO alleges, pursuant to 15 U.S.C.
3 § 1692k(c), to the extent that a violation(s) is established, any such violation(s)
4 was not intentional and resulted from a bona fide error notwithstanding
5 maintenance of procedures reasonably adapted to avoid any such error.
6

7 THIRD AFFIRMATIVE DEFENSE

8 As a third affirmative defense, NCO alleges Plaintiff knowingly and
9 voluntarily waived his rights to obtain any or all of the relief sought in the
10 complaint.
11

12 FOURTH AFFIRMATIVE DEFENSE

13 As a fourth affirmative defense, NCO alleges, Plaintiff consented to
14 and/or invited the conduct for which he seeks relief.
15

16 FIFTH AFFIRMATIVE DEFENSE

17 As a fifth affirmative defense, NCO alleges damages, if any, suffered by
18 Plaintiff were caused by third parties.
19

20 WHEREFORE, NCO respectfully requests that:

- 21 A. Plaintiff take nothing by way of his Complaint;
22 B. Judgment of dismissal be entered in favor of NCO;
23

1 C. NCO be awarded costs and attorney's fees it has incurred in
2 defending this lawsuit.

3 D. NCO be granted such other and further relief as the Court deems
4 just and proper.
5

6 Respectfully submitted this 14th day of October, 2008.

7 MILLS MEYERS SWARTLING
8 Attorneys for Defendant
9

10
11 By: /s/Scott M. Ellerby
12 Scott M. Ellerby
13 WSBA No.: 16277
14
15
16
17
18
19
20
21
22
23

24
25 ANSWER OF NCO FINANCIAL SYSTEMS,
26 INC. TO COMPLAINT - 11
(NO. CV-08-306-RHW)

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

CERTIFICATE OF SERVICE

I hereby declare that on October 14, 2008, I electronically filed Answer of NCO Financial Systems, Inc. to Complaint with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

bobmitchelllaw@yahoo.com

MILLS MEYERS SWARTLING
Attorneys for Defendants

By: /s/Scott M. Ellerby
Scott M. Ellerby, WSBA No. 16277

ANSWER OF NCO FINANCIAL SYSTEMS,
INC. TO COMPLAINT - 12
(NO. CV-08-306-RHW)

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343